IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN,UNDER ARBITRATION ACT. No 34 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of an0 : NO

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5. Whether it is to be circulated to the Civil Judge? : NO

MOHANLAL SAJANDAS

Versus

HARESHKUMAR NARANDAS

Appearance:

MR AR THACKER for Petitioners

MR ANSHIN H DESAI for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9,10

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 02/05/2000

CAV JUDGEMENT

This petition is filed by the petitioners for appointment

of Shri Otnamal Shamumal as Arbitrator and for referring the dispute difference between the parties for adjudication by allowing this petition. Prayer is also made to restrain the rescindments from conducting partnership business in the name and style of "Vinayk Cold Storage Company" and from transacting, dealing or transferring the property of Vinayak Cold Storage Company in favour of any other party.

The case of the petitioners was that petitioners and respondnts entered into a partnership deed on 30th March, 1996 and started business in the name and style of "Vinayak Cold Storage Company" at Jamnagar. Shares of all the partners were fixed under the said agreement. Clause 4 provides that partnership was "partnership at will". Clause 13 fixed shares of the partners and clause 21 provided that in case of difference or dispute, the matter shall be settled by arbitrator in accordance with the provisions of the Arbitration and Con ciliation Act, 1996 . A copy of the partnership deed is at Annexure `A' to the petition.

It was stated by the petitioners that on 23rd February, 1999, respondent No.1 issued a notice through his advocate to the remaining partners alleging that though he was working with all sincerity, the other partners were not working with devotion. It was,therefore, not possible to carry on business in the partnership and as the partnership was partnership at will, in accordance with the provisions of Section 43 of the Partnership Act, the partnership shall be deemed to be dissolved with effect from January 31, 1999. By another notice dated 7th March, 1999, respondent No.1 clarified that there was an error of date in the notice which was issued earlier and in fact, partnership firm would stand dissolved with effect from 31st March, 1999 and not from 31st January, 1999.

The petitioners replied to the above notice on 18th March, 1999 admitting that there was partnership firm of Vinayak Cold Storage Company. But it was alleged that since many years, t he petitioners were not allowed to take part in business and administration of the firm . They were not given accounts of the firm and their consent was also not taken in running of business. It was stated that under clause 21 of the partnership deed

disputes were to be settled through Arbitrator and it was,therefore, incumbent on the part of respondent No.1 to get the dispute referred to Arbitrator. The petitioners suggested the name of Otandas Shanumal. as their arbitrator. Respondent No.1 was asked to state as to whether the name given by the petitioners was acceptable to him or he was inclined to suggest any other name as his arbitrator.

On 20th March, 1999, respondent No.1 sent a communication through his advocate to the petitioners and contended that t he partnership was partnership at will and every partner had right to dissolve it. It can be dissolved by any partner at any time and there was no question of getting partnership firm dissolved through arbitrator. It was also stated that there was no balance sheet of accounts and assets, No dispute or difference could be said to have arisen between the parties which can be settled by arbitrator. By another letter dated 6th July, 1999 , respondent No.1 sent a copy of balance sheet of 1998-99 with a cheque of Rs,. 57, 661/.- stating that old partnership had come to an end and a new partnership had come into existence from 1st April, 1999. Petitioner No.1 however, returned the said cheque along with a letter dated 15th July, 1999.

The case of the petitioners was that since there was partnership firm as per terms and conditions of the partnership deed, all disputes could be settled only by an Arbitrator. It was,therefore, incumbent on respondent No.1 to either accept the name of arbitrator as suggested by them or to give name who can be appointed as his arbitrator and settle the dispute through such arbitrator. Since it was not done, action of the first respondent was contrary to law. It was also the case of the petitioners that accounts were never settled, amounts were not paid and the action of respondent No.1 of forming new partnership firm with effect from 1st April, 1999 is not legal and valid. It was also alleged that respondent No.1 and other persons were trying to dispose of assets of partnership firm even though the dispute between partners was pending and since the partnership firm could not be said to be dissolved, neither respondent No.1 nor any other person had right to dispose of the property. The petitioners were hence constrained to issue a public notice on 15th July 1999, in NOBAT daily of Jamnagar that no partner has right or authority to transfer properties or to deal with property or assets of Vinayak Cold Storage Company and arbitrator was

required to be appointed. As nothing was done was done by respondent No.,1, the petitioners have approached this Court.

Notice was issued by the Honourable Chief Justice (Mr.K.G. Balakrishnan) on 23rd July, 1999 by making it returnable on 6th August, 1999. On 6th August, 1999, fresh notice was issued and the respondents were directed not to alienate immovable property owned by the partnership firm. That interim relief was continued from time to time.

I have heard the learned advocates for the parties.

It was contended by Mr., J.R. Nanavati for the petitioners t hat partnership firm having come into existence,all disputes could have been dealt with and decided only in accordance with terms and conditions of the partnership deed. He submitted that clause 21 specifically provided or appointment of arbitrator in case of difference or dispute between partners and it was,therefore, obligatory on respondent No.1 to refer the matter to arbitrator. As it was not done,. the petitioners were constrained to approach this Court. He submitted that accounts were never settled and it was not open to respondent No.1 to ignore clause 21 of the partnership deed and to contend that partnership firm has come to an end and to enter into a new partnership with any other person. Till rights and liabilities are determined, accounts are settled and partnership firm is legally dissolved, no action could have been taken by respondent No.1 except referring the dispute to Arbitrator. In this connection, he drew my attention to various provisions of Indian Partnership Act, 1932 and particularly Sections 43 to 50 of the Act. He also referred to the following decisions:

(1) K.K.Shah vs. Khorshed Banu,AIR 1970 SC 1147
(2) Anant Madaan v., State of Haryana,(1995) 2 SCC 135
(3) (1996) 11 SCC 225.

Mr Desai, on the other hand, submitted that the petition deserves to be dismissed on the short ground that partnership firm has come to an end and there is no legal, valid and subsisting partnership between t he partners and hence clause 21 of the partnership deed cannot be pressed in service. He submitted that it is settled law that when partnership is partnership at will, no further action is required and any partner can,at any point of time, dissolve such partnership firm by expressing his intention to that effect. Such intention

must be clear. Mr.. Desai submitted that in the instant case, respondent No.,1 who was one of the partners clearly, unequivocally and specifically conveyed his intention to the petitioners that partnership firm was dissolved with effect from 1st April, 1999. He also submitted that accounts were settled, balance sheet was prepared and partnership came to an end. As the partnership firm is not in existence, it is not open to the petitioners to make any application under the provisions of section 11 of the Arbitration and Conciliation Act, 1996 requesting the Chief Justice to appoint Arbitrator. Mr. Desai submitted that there is total misconception on the part of the petitioners in not distinguishing (I) dissolution of partnership firm and (ii) sending of cheque of particular amount. He urged that sending of a cheque to the petitioners or any of them would not go to suggest that partnership firm had not been dissolved. On the contrary, on the basis of statement of accounts and balance sheet, payment was made. Thereafter, it cannot be said by the petitioners that they have right in the property of the firm which stood dissolved by act of a partner in accordance with law. He,therefore, submitted that the petition deserves to be dismissed as it is not maintainable at law.

In the facts and circumstances, in my opinion, the present petition is not maintainable. It is not in dispute by and between the parties that partnership firm was entered into between the parties. It is also undisputed that partnership was partnership at will. In accordance with provisions of the Partnership Act, therefore, such partnership could be dissolved by any partner at any time. Only thing required was that there must be an intention on the part of such partner to bring to an end the partnership. From various documents placed on record, in my opinion, it is clearly established that respondent No.1 has conveyed his intention to the petitioners that partnership firm shall be deemed to be dissolved and accordingly, it stood dissolved with effect from 31st March, 1999. If any question has arisen thereafter, such question cannot be said to have arisen during or in the course of partnership business,. Such dispute obviously cannot be dealt iwth , settled or decided in accordance with clause 21 of the partnership deed inasmuch as after the dissolution of partnership, that clause would not operate and cannot be invoked by the parties. Since the contention of the learned advocate for respondent No.1 that partnership firm was dissolved after 31st March, 1999 is well founded, the present petition filed by the petitioners is not maintainable and deserves to be dismissed.

For the foregoing reasons, in my opinion, the petition filed by the petitioners is not maintainable at law and deserves to be dismissed. It is accordingly dismissed being not maintainable. Notice is discharged. No order as to costs. Interim relief stands vacated.

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